

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 478 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

NEWTON ENGINEERING AND CONSTRUCTION CO.

Versus

LLOYD INSULATIONS (INDIA) LTD.

Appearance:

MR AR MAJMUDAR for Petitioner
MR SJ SHAH for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 21/12/2000

ORAL JUDGEMENT

1. M/s. Newton Engineering & Construction Co., petitioner-original defendant, has filed this revision application under Section 115 of the Civil Procedure Code challenging the order dated 10.4.2000 passed by the Third Joint Civil Judge (Senior Division), Baroda, in Summary

Suit No. 389 of 1998 whereby the court allowed the application Exh. 29 for amendment of the plaint.

2. The respondent-original plaintiff herein had filed Summary Suit No. 389 of 1998 before the learned Civil Judge (Senior Division), Baroda, against M/s. Newton Engineering & Construction Co. claiming Rs. 10,80,913.82 ps. The said suit was filed on 18.6.1998.

3. In the said suit the plaintiff filed an amendment application dated 15.3.1999 at Exh. 29 and prayed as under:

"That, after para 15, the following para 15A(i) and (ii) be inserted:

15-A(i) that, the suit is filed under O.37 of C.P.C. 15A(ii) that no relief which does not fall within the ambit of this suit, has been claimed in the plaintiff."

4. The defendant filed reply to the said application. The learned Third Joint Civil Judge (Senior Division), Baroda, after considering the facts of the case, was pleased to observe that where the application for amendment has been made in order to have compliance with the exact requirement of law amendment should be allowed. He has relied on the decision of the Supreme Court in the case of M/S. GANESH TRADING CO. VS. MOJI RAM reported in A.I.R. 1978 SC page 484 where it has been held that defective pleadings are generally curable if the cause of action sought to be brought out was not ab initio completely absent. The learned Judge has also relied on the judgement of the Hon'ble Supreme Court in the case of LAKHI RAM VS. TRIKHA RAM reported in 1998(2) Supreme Court Cases page 720 also and allowed the application.

5. Being aggrieved by the aforesaid judgement, the original-defendant petitioner herein has filed this revision application before this court. Mr. A.R. Majmudar learned advocate for the petitioner states that in this case Order 37 Rule 2 reads as follows:

"(2) Subject to the provisions of sub-rule (1), the Order applies to the following classes of suits, namely:-

(a) suits upon bills of exchange, hundies and promissory notes;

(b) suits in which the plaintiff seeks only to

recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising -

(i) on a written contract; or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only"

6. He submitted that out of three mandatory requirements only mandatory requirement of clause (iii) has been complied with by the plaintiff. However, by the amendment, clauses (a) and (b) are sought to be added in this behalf. Therefore by the scope of amendment, the plaintiff has desired to enlarge the scope of the suit and therefore the amendment ought not to have been granted.

7. On the other hand Mr. R.N. Shah, learned senior advocate for Mr. S.J. Shah for the respondent stated that it is, no doubt, true that the plaintiff had filed summary suit. The amount has been claimed on the basis of the bills and therefore the same is sought to be recovered as debt and therefore Order 37 Rule 1 is complied with. It is, no doubt, true that clauses (a) and (b) of Order 37 were not mentioned but number (2) was mentioned. That was a procedural requirement and therefore it was not mentioned and now they desired to amend the same and cure that procedural requirement in this behalf.

8. In my view there is no substance in the revision application filed by the petitioner. The respondent-plaintiff has sought to cure the procedural requirement and it does not change the nature of the suit. In my view the amendment is necessary for determining the real points in controversy between the parties. In my view the plaintiff's suit is not wholly misconceived by the amendment and the amendment does not take away the right of the defendant in this behalf. In my view the amendment does not introduce any new or inconsistent cause of action between the parties. Therefore, also the amendment is liable to be allowed.

9. I have also considered both the judgements of the Hon'ble Supreme Court, namely M/S. GANESH TRADING CO.

(supra) and LAKHI RAM (supra). In my view the amendment sought does not alter the cause of action. It also brings out correctly the procedural requirement in this behalf.

10. In my view the amendment application does not change the cause of action. In my view the function of practice and procedure is to provide the machinery or the manner in which the legal rights or status and legal duties may be enforced or recognised by a court of law. The rules of procedure are intended to be a handmaid to the administration of justice and they must, therefore, be construed liberally and in such manner as to render the enforcement of substantive rights effective. In my view a party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. Rules of pleadings are intended as aids for a fair trial and for reaching a just decision. Laws of procedure are based on the principle that as far as possible, no proceeding in a court of law should be allowed to be defeated on mere technicalities. The provisions of the Code of Civil Procedure, therefore, must be interpreted in a manner so as to subserve and advance the cause of justice rather than to defeat it. In my view the procedural requirement which has been made by amendment has to be considered necessary in the suit and therefore I have considered that the order of the learned judge allowing the amendment is right, legal and proper. Therefore, this revision application requires to be rejected and accordingly it is rejected. No order as to costs.

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